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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,347	03/26/2004	Terry Pullaro	PULT 9283US	8229

1688 7590 12/06/2006

POLSTER, LIEDER, WOODRUFF & LUCCHESI
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EXAMINER

HUNTER, ALVIN A

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,347

Applicant(s)

PULLARO, TERRY

Examiner

Alvin A. Hunter

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 1 is objected to because of the following informalities: “. . . while the first end of the handle remains free weight free,” should read – . . while the first end of the handle remains weight free,--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 15, and 17 recite “the device comprising” and then further recites “the device consisting essentially of”. Which does the applicant intend to use to clarify the claim language? For the purpose of examination, the claims will be interpreted as “comprising” (See MPEP 2111.03 with respect to “comprising” and consisting essentially of”).

Further the language non-rotatable creates issues of new-matter being that the handles are interchangeable on the device. The weight has to be rotated in order to remove the handle. Though the language creates new matter issues, it is suggested that the claim be written to avoid this issue. The examiner reserves the right to apply a rejection under 35 USC 112, 1st paragraph if issue is not cleared. Applying the 112, 1st

paragraph rejection would not result in a new issue being that it has been brought to the attention of the applicant..

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koszalinski (USPN D428461) in view of Huffman (USPN 5215307) further in view of Spivey (USPN 4272077).

Regarding claims 1-3 and 10-16, Koszalinski discloses a weight exercise device comprising a handle shaped like a grip portion of a sport implement having a first and second ends and a weight positioned at the second end of the handle (See Entire Document). Koszalinski does not disclose the length of the device or the size of the handle. Huffman discloses an exercise device for strengthening muscles comprising a handle and a weight at the end of the handles wherein the device is of a length of 15 to 30 inches (See Summary of the Invention). Huffman also notes that the weights on the ends of the handle may be offset such that one end of the handle weighs more than the other end of the handle. Such effect would move the location of the center of gravity anywhere from the center of the device to the ends of the device. One having ordinary skill in the art would have found it obvious to have the device of the above lengths, especially 15 inches, in order to vary the location of the center of gravity of the device.

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Huffman notes that the grips of a particular sport implement may be used such as in golf, baseball, tennis, etc. If in doubt, Piccini discloses a device for conditioning the forearms wherein the device comprises a handle and a weighted end and is approximately the length of a human forearm (14 inches). One having ordinary skill in the art would have found it obvious to have the device of Koszalinski to be about 14 inches, as taught by Piccini in order to condition the forearms. Spivey discloses a handle for a golf club in which the handle is about 30% larger than a standard golf grip (See Figure 5). One having ordinary skill in the art would have found it obvious to increase the size of the grip in order to improve jerks or yipes, or in other words, improve the gripping of the implement. It should be noted that the devices of Huffman and Piccini all can be used to condition the forearms for various sports.

Regarding claims 6 and 15, Huffman notes that the device has a length of 15 to 30 inches and also notes that the length of the weights may vary. One having ordinary skill in the art would have found it obvious to have any length for the handle and weight so long as the device strengthens the arm. Further Piccini discloses the device being 14 inches wherein it is shown that the handle only accounts for about 1/3 of the entire length of the device. One having ordinary skill in the art would have found it obvious to have any length for the handle and weight so long as the device strengthens the arm

Regarding claim 7, Huffman implies that the device weighs more than the handheld implement used in the sport (See Background of the invention).

Regarding claims 8 and 9, Huffman discloses the handles having an externally thread portion and the weight having an internally thread socket (See Figure 10).

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Regarding claim 17, see the above regarding the structure. Huffman and Piccini both disclose the device being swung.

Claims 4 and 5 rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art applied in claim 1 above in view of Hart (USPN 6379261).

Regarding claims 4 and 5, the prior art applied to claim 1 above does not disclose the size of the weight. Hart discloses a swing trainer having a handle and weight wherein the weight has a length of 1.5 to 4 inches and a diameter of 1.25 in (See Column 10, lines 30 through 39). Hart notes that the device is of an adequate size to be used indoors or outdoors. One having ordinary skill in the art would have found it obvious to have the weight of the prior art, applied to claim 1, to be less than 4 inches in length and diameter, as taught by Hart, in order to give the device an adequate size to be used indoors or outdoors.

Response to Arguments

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

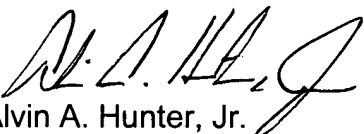
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin A. Hunter whose telephone number is 571-272-4411. The examiner can normally be reached on Monday through Friday from 7:30AM to 4:00PM Eastern Time.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim, can be reached at 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Alvin A. Hunter, Jr.